




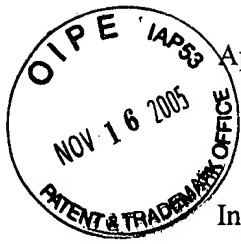
Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 13791	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number 09/981,883	Filed October 19, 2001
		First Named Inventor John HAUGHEY	
		Art Unit 2195	Examiner Lilian VO
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 26,868 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		<p> Signature</p> <p>Ralph A. Dowell Typed or printed name</p> <p>(703) 415-2555 Telephone number</p> <p>11/16/2005 Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>			
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Application No. 09/981,883

Patent
Attorney Docket No. 13791

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: U.S. Patent Application of John HAUGHEY

App. No.: 09/981,883

Group Art Unit: 2195

Filed: October 19, 2001

Examiner: Lilian VO

For: METHOD AND SYSTEM FOR EXECUTING MULTIPLE TASKS IN A
TASK SET

REASONS TO ACCOMPANY PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

The applicant respectfully requests pre-appeal brief review of the Examiner's final action mailed May 16, 2005. A Notice of Appeal is being filed herewith.

Claims 6, 8, 11, 13-22 and 32-41 are pending.

Claims 6, 11, 13-18 and 20 remain rejected under 35 USC 102(e) as anticipated by U.S. Patent 6,385,637 to Peters *et al.* (hereinafter "Peters").

Claim 19 remains rejected under 35 USC 103(a) as obvious over Peters in view of U.S. Patent 6,757,897 to Shi *et al.* (hereinafter "Shi").

Claim 21 remains rejected under 35 USC 103(a) as obvious over Peters.

Claims 22-26 remain rejected under 35 USC 103(a) as obvious over Peters in view of U.S. Patent 5,764,992 to Kullick *et al.* (hereinafter "Kullick").

Claims 8, 32-38, 40 and 41 remain rejected under 35 USC 103(a) as obvious over Peters in view of U.S. Patent 6,553,400 to Fukuda (hereinafter "Fukuda").

Claim 9 remains rejected under 35 USC 103(a) as obvious over Peters in view of Fukuda and further in view of Shi.

The Applicant respectfully requests the Panel of Examiners to which the current submission is directed to graciously allow the application based on the arguments presented herein.

1) IMPROPER FINAL REJECTION

It is the Applicant's view that the final action presents a new ground of rejection that had been fully available to the Examiner at the beginning of prosecution.

The following summarizes the events in the present application, leading to the instant submission:

In the first office action mailed September 22, 2004, the Examiner rejected claim 6 on the basis of 35 USC 103(a) as being obvious in view of Peters and Shi.

In the response filed February 22, 2005, the Applicant presented arguments in support of claim 6, and simply reformulated this claim to render it independent, namely by including the limitations of its former base (i.e., claim 1). One other typographical inconsistency was addressed. It is noted that the scope of claim 6 was not altered in any way.

The Examiner subsequently issued a final action on May 16, 2005, rejecting claim 6 on the basis of 35 USC 102 as being anticipated by Peters. This is clearly a new ground of rejection which, it is respectfully submitted, was not necessitated by the Applicant's amendment, since the scope of claim 6 had not changed. Rather, this new ground of rejection could have been, but was not, applied by the Examiner when initially rejecting claim 6 on September 22, 2004.

In the Applicant's response filed October 12, 2005, in addition to somewhat more forcefully expressing its arguments in support of claim 6, *inter alia* (see page 10 of said response), the Applicant protested the finality of the Office Action on the basis that the new ground of rejection was not necessitated by the amendment to claim 6 (see pages 7-8 of said response).

The Examiner subsequently issued an Advisory Action, which was received by the Applicant's attorney on November 15, 2005 (over one month from the date of the filing of the response to the final action, and only one day before expiry of the six-month deadline for response). In the Advisory Action, the Examiner made the following statement:

“the amendment of claim 6, even just by incorporating features of its base claim, changed the scope of the claim and thus required further consideration by the examiner.”

With respect, this is an incorrect statement and should be reconsidered. Moreover, the Applicant wishes to direct the Panel's attention to the following passages from the Manual of Patent Examination Procedure, 8th Edition 2001, Revised August 2005:

“second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement“ [MPEP 706.07(a)] (emphasis added)

“Piecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available” [MPEP 707.07(g)] (emphasis added)

“Switching [...] from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance of the application or a final rejection.” [MPEP 706.07]

In the present case, it is respectfully submitted that the new ground of rejection (i.e., the anticipation rejection under 35 USC 102(e)) was not necessitated by the Applicant's inconsequential amendment to claim 6. It would thus appear that the Examiner is both conducting “piecemeal examination” and inappropriately “switching [...] from one set of references to another”. With respect, the Panel is respectfully requested to instruct the Examiner to withdraw the finality of the rejections and, furthermore, to issue a notice of

allowance further to consideration of the Applicant's arguments set forth herein below and in previous office action responses.

2) REJECTIONS OF THE CLAIMS

Regarding claim 6, despite the Examiner's lengthy text in paragraphs 2-5 in the Advisory Action, the Applicant respectfully believes that the Examiner has not built a reliable case as to how Peters could be viewed as teaching the feature of "selecting an incomplete task from a set of at least one incomplete task on the basis of an expected duration for that task". Regrettably, it would appear that the Applicant's previous responses (e.g., page 10, paragraph 4, filed October 12, 2005) have been misinterpreted as an attempt to rely on unclaimed features, rather than being utilized as an aid in understanding the Applicant's point of view.

Regarding claim 19, in the Advisory Action, the Examiner has stated that "although Shi reference was determined as not necessary in the rejection of the feature in claim 6, it doesn't mean Shi does not teach or suggest such feature." However, the Applicant does not understand the Examiner's point, since the Applicant indicated on page 12, paragraph 1 of the response filed October 12, 2005, that Shi had already been dealt with on pages 11 and 12 of the response filed on February 22, 2005. It would appear that no remark made by the Examiner has ever taken into considerations the Applicant's arguments about Shi.

Regarding claim 22, in the Advisory Action, the Examiner has attempted to clarify what was meant when rejecting this claim in the final action. However, this is information that should have appeared in the Final Action and could be considered piecemeal examination, which is impermissible, as stated above.

Regarding claim 8, it should be pointed out that the Examiner rejected claim 8 in the final action under Peters and Fukuda, whereas initially the claim was rejected under Peters and Shi. However, the only amendment made to claim 8 was to render it independent by incorporating into it the limitations of the base claim. Hence, although the Applicant did not make mention of this fact in the response to the final action, the Examiner's issuance of a Final Action based on this new ground of rejection is still inappropriate, because the new ground of rejection was not necessitated by the trivial amendment to claim 8.

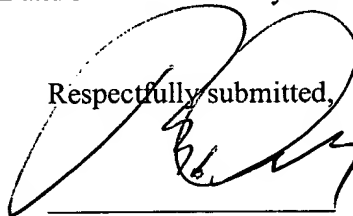
Also regarding claim 8, in the penultimate paragraph of the Advisory Action, the Examiner has indicated that the "applicant is arguing a feature that are not recited in the rejected claim", whereas the Applicant had merely outlined a logical thought process for the Examiner to consider. With respect, the Applicant notes that what the Applicant is contending in paragraph 1 of page 16 of the response to the final action is that "the Examiner has failed to show that Fukuda discloses or suggests an incomplete task from a set of at least one incomplete task on the basis of a number of times that the task has been previously suspended". The Applicant is not, contrary to the Examiner's assertion, arguing a feature that is not recited in the claim.

For the above reasons, the Panel is respectfully requested to instruct the Examiner to issue a notice of allowance further to consideration of the Applicant's arguments set forth herein above and in previous office action responses.

3) CONCLUSION

In view of the foregoing, favorable reconsideration of the Final Action is respectfully requested and allowance of claims 6, 8, 11, 13-22 and 32-41 is earnestly solicited.

Respectfully submitted,



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